

(ORDER LIST: 574 U.S.)

MONDAY, NOVEMBER 17, 2014

ORDERS IN PENDING CASES

13-352 B&B HARDWARE, INC. V. HARGIS INDUSTRIES, INC., ET AL.

13-553 AL DEPT. OF REVENUE, ET AL. V. CSX TRANSPORTATION, INC.

13-1211 HANA FINANCIAL, INC. V. HANA BANK, ET AL.

The motions of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument are granted.

13-1352 OHIO V. CLARK, DARIUS

The motion of respondent for appointment of counsel is granted. Jeffrey L. Fisher, Esquire, of Stanford, California, is appointed to serve as counsel for the respondent in this case.

13-10302 DARNELL, ELIGAH V. TEXAS

13-10635 DAVIS, COREY V. V. DONAHOE, POSTMASTER GEN.

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

14-103 BAKER BOTTS, L.L.P., ET AL. V. ASARCO, L.L.C.

The motion of petitioners to dispense with printing the joint appendix is granted.

14-5122 CHENG, TONY V. CALIFORNIA

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied. Justice Alito took no part in the consideration or decision of this motion.

14-6257 SUI, YAN V. MARSHACK, RICHARD A., ET AL.
14-6261 SMIGELSKI, JACEK I. V. PETERS, ELLEN A., ET AL.
14-6530 IN RE LYNN SMITH
14-6559 THOMPSON, ERIC M., ET AL. V. AULT, WARDEN, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 8, 2014, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI GRANTED

13-1421 BANK OF AMERICA, N.A. V. CAULKETT, DAVID B.
14-163 BANK OF AMERICA, N.A. V. TOLEDO-CARDONA, EDELMIRO

The motion of Loan Syndications and Trading Association, et al. for leave to file a brief as *amici curiae* is granted. The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument.

CERTIORARI DENIED

13-10187 HARTMAN, DOROTHY M. V. BANK OF NEW YORK MELLON, ET AL.
13-10480 PAYNE, GERALD J. V. VIRGA, WARDEN
13-10574 VIOLA, GREGORY V. UNITED STATES
13-10577 OGLE, MELANIE A. V. OHIO
14-19 TEO, ALFRED S., ET AL. V. SEC
14-48 GLENN-COLUSA IRRIGATION, ET AL. V. NATURAL RESOURCES, ET AL.
14-108 WYATT, DARON V. F. E. V., ET AL.
14-110 DEAN FOODS COMPANY, ET AL. V. FOOD LION, LLC, ET AL.
14-152 SEXTON, BRIAN V. PANEL PROCESSING, INC. ET AL.
14-156 MEDINA, ANGELO, ET AL. V. PUERTO RICO, ET AL.

14-178 KALYANARAM, GURUMURTHY V. AMERICAN ASSN. OF UNIVERSITY
14-240 METYK, THOMAS J., ET AL. V. KEYCORP, ET AL.
14-274 ALIM, MOHAMMAD Z. V. KBR, INC.
14-287 EMI SERVICES OF NC V. DOCRX, INC.
14-293 BONACCI, NICHOLAS J. V. BONACCI, MYRIAM B.
14-295 GARCIA, IRVING M. V. TEXAS
14-296 METZGER, RAPHAEL V. METZGER, TAMMY, ET AL.
14-298 SVOBODA, JOHN F., ET UX. V. BANK OF AMERICA, N.A., ET AL.
14-299 ACCEPTANCE CASUALTY INS. CO. V. GREAT WEST CASUALTY CO., ET AL.
14-301 CONTE, SHELLY, ET AL. V. JAKKS PACIFIC, INC.
14-309 WILKENING, WALTER L., ET AL. V. BD. OF EDUC. OF OLDHAM CTY.
14-312 KLAYMAN, LARRY E. V. ZUCKERBERG, MARK, ET AL.
14-315 GOODNIS, AOUIE, ET AL. V. HARRIS, ATT'Y GEN. OF CA
14-320 BARKHORN, RONALD, ET AL. V. PORTS AMERICA CHESAPEAKE, LLC
14-335 LEE, VINCENT D. V. MICHIGAN, ET AL.
14-349 GAGNARD, JAMES, ET UX. V. GOLDMAN, SUSAN
14-371 JONES, BERNARD, ET AL. V. McNEESE, RICK, ET AL.
14-421 LEAGUE OF WOMEN VOTERS, ET AL. V. CITY OF CHICAGO
14-437 BLAKENEY, MICHAEL H. V. UNITED STATES
14-442 SEECO, INC., ET AL. V. STEWMON, SARA
14-5024 HIRSCH, JOHN A. V. VT BD. OF BAR EXAMINERS
14-5078 BRENT, NATHANIEL V. WENK, MIA, ET AL.
14-5092 TUCCIO, SAMUEL V. U.S. SECURITY ASSOCIATES, INC.
14-5095 WATKINS, LARRY W. V. CREWS, SEC., FL DOC, ET AL.
14-5188 WHITELEY, ROBIN N. V. HOLDER, ATT'Y GEN.
14-5193 KHAMATI, ELIZABETH M. V. LEW, SEC. OF TREASURY
14-5207 FISHER, BRIAN S. V. UNITED STATES
14-5216 GARCIA-CARRILLO, VICTOR V. UNITED STATES

14-5705 MILLER, GREGORY J. V. CAROLINAS HEALTHCARE SYSTEM
14-5760 JACKSON, JONATHAN V. CALIFORNIA
14-5963 GRASSI, RONALD B. V. COLORADO
14-6155 DAVIS, ROBYN B. V. LOUISIANA
14-6209 DAY, MARQUIS V. JOHNSON, WARDEN
14-6211 HURLEY, JEFFEREY A. V. CLARKE, DIR., VA DOC
14-6219 BELLON, BRIAN C. V. RUSSELL, WARDEN
14-6222 BRYSON, JULIUS V. McLAUGHLIN, WARDEN
14-6223 BEALER, ANTONIO V. GODINEZ, SALVADOR A., ET AL.
14-6225 JAMES, DANIEL C. V. MARTIN, WARDEN
14-6230 DOUTHIT, SHANNON M. V. STEPHENS, DIR., TX DCJ
14-6233 REMBERT, JERLARD D. V. FLORIDA
14-6234 McDONALD, RANDY V. CAIN, WARDEN, ET AL.
14-6235 PEYTON, LEE E. V. SUPERIOR COURT OF CA, ET AL.
14-6237 LAVERGNE, BRANDON S. V. SANFORD, MAC, ET AL.
14-6241 BROOKS, DAMIAN V. ILLINOIS
14-6242 SHERWOOD, JASON V. HOLLOWAY, WARDEN
14-6246 STEWART, MICHAEL J. V. FLORIDA
14-6252 SHERWOOD, JASON V. JORDAN, CAROLYN
14-6256 SETTLES, JEREMY V. LeGRAND, WARDEN, ET AL.
14-6258 ELLIOTT, MARK G. V. MICHIGAN
14-6265 BELL, ALLEN V. STEPHENS, DIR., TX DCJ
14-6266 ARNOLD, CHINA V. OHIO
14-6268 GAFFNEY, VONTE G. V. BISHOP, F. B., ET AL.
14-6269 McClURE, PHILIP W. V. OR BOARD OF PAROLE
14-6270 PROPHET, ANTONIO V. WEST VIRGINIA
14-6276 ADAMS, LOANITA V. CITY OF FEDERAL WAY, WA, ET AL.
14-6280 SALAZAR, LOUIS A. V. CALIFORNIA

14-6281 WOODS, NIRA V. REGENTS OF THE UNIV. OF CA.
14-6291 GRANSTROM, RAY V. GRANSTROM, THERESA
14-6296 BALLARD, LINDA E. V. GEO GROUP, INC., ET AL.
14-6305 CAVIN, MARIO V. WOLFENBARGER, WARDEN
14-6307 SMITH, MORRIS V. CRICKMAR, WARDEN
14-6310 JONES, JOHN V. FLORIDA PAROLE COMMISSION
14-6344 WASHINGTON, MICHAEL S. V. OREGON
14-6346 PADDY, DONYELL V. WETZEL, SEC., PA DOC, ET AL.
14-6365 CESAL, CRAIG J. V. FEDERAL PRISON INDUSTRIES, INC.
14-6379 WHITE, KATHY G. V. KANSAS CITY AREA TRANSP. AUTH.
14-6426 S. Y. H. V. FL BD. OF BAR EXAMINERS
14-6428 LOMELI, MARCOS A. V. HOLDER, ATT'Y GEN.
14-6474 MUHAMMAD, JAMES V. SUPERIOR COURT OF CA, ET AL.
14-6479 SANCHEZ, CENOBIO M. V. JONES, WARDEN, ET AL.
14-6480 THUNDERBIRD, KENNETH V. OREGON, ET AL.
14-6481 SUNDAY, TIMOTHY L. V. JONES, WARDEN, ET AL.
14-6526 BRIGGS, LOVINE V. SOTO, WARDEN
14-6582 WASHINGTON, DEBBIE V. DONOHOE, POSTMASTER GEN., ET AL.
14-6653 THOMPSON, DOUGLAS V. MO BD. OF PAROLE, ET AL.
14-6706 GREGORY, HERBERT E. V. GSA
14-6707 GUZMAN CORREA, DANNY V. UNITED STATES
14-6726 CUETO-PARRA, SANTOS V. UNITED STATES
14-6727 WEEKS, JEROME J. V. UNITED STATES
14-6730 GRIBBEN, PAUL V. CREWS, SEC., FL DOC
14-6735 PARTMAN, STANLEY D. V. UNITED STATES
14-6741 PERICLES, MICHAEL V. UNITED STATES
14-6742 STANTON, LEON V. UNITED STATES
14-6763 BUTLER, RAKHEEM V. UNITED STATES

14-6766 CURTIS, BOBBY D. V. UNITED STATES
14-6768 HAYDEN, JULIUS E. V. UNITED STATES
14-6770 MERRICKS, LEE V. V. UNITED STATES
14-6771 HEALY, LOUIS M. V. UNITED STATES
14-6772 LEVITAN, DANIEL J. V. FLORIDA
14-6774 JOHNSON, ADONEUS V. UNITED STATES
14-6775 JACKSON, EARNEST J. V. FOSTER, WARDEN
14-6777 BYRD, DARRELL L. V. UNITED STATES
14-6779 BOBO, MICHAEL R. V. UNITED STATES
14-6780 AKANDE, JASON S. V. UNITED STATES
14-6783 TODDIE, MARQUIS V. UNITED STATES
14-6784 TIPTON, JAMES V. UNITED STATES
14-6788 BYERS, JAMES V. UNITED STATES
14-6789 BELL, AARON L. V. UNITED STATES, ET AL.
14-6790 PETERSON, JAMES V. UNITED STATES
14-6794 JACKSON, CASTLE D. V. UNITED STATES
14-6795 JONES, BARRY V. UNITED STATES
14-6798 TORRES-SABRADO, GEFREY V. UNITED STATES
14-6801 SANTIESTEBAN, DARVIS V. UNITED STATES
14-6803 JOHNSON, DEQUAVIOUS V. UNITED STATES
14-6804 JOHNSON, UNDRA V. UNITED STATES
14-6805 COLLINS, SHAVON V. UNITED STATES
14-6811 PALADIN, PATRICIO V. UNITED STATES
14-6812 McCREA, ASTON E. V. UNITED STATES
14-6816 REYES, THOMAS V. UNITED STATES
14-6817 ROUECHE, CLAYTON V. UNITED STATES
14-6823 MARCH, GONZALES V. UNITED STATES

14-6828 LOCKLEAR, KENNETH V. UNITED STATES

The petitions for writs of certiorari are denied.

14-331 ARTHEY, CHRISTOPHER, ET UX. V. SCHLUMBERGER TECHNOLOGY CORP.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

14-6213 BITON, DANIELLE V. UNITED STATES, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

14-6464 MURPHY, JOHN P. V. NORTH DAKOTA

14-6579 CREDICO, JUSTIN M. V. UNKNOWN EMPLOYEE HOUSTON FBI

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

14-6725 PEREZ, EDWIN V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

14-6758 THOMAS, JASON C. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this

petition.

HABEAS CORPUS DENIED

14-6875 IN RE CLARENCE TIMMONS, JR.

The petition for a writ of habeas corpus is denied.

MANDAMUS DENIED

14-6282 IN RE ERIC A. WELCH

14-6300 IN RE LEI KE

The petitions for writs of mandamus are denied.

14-5179 IN RE JIMMY R. HUSBAND

The petition for a writ of mandamus is denied. Justice Kagan took no part in the consideration or decision of this petition.

14-6226 IN RE DAVID LIBRACE

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

13-1129 TURNER, HAROLD V. UNITED STATES

13-1268 DIZE, JENNIFER E. V. ASSOCIATION OF MARYLAND PILOTS

13-10292 PATKINS, DAVID C. V. GONZALES, R., ET AL.

13-10401 RAY, CANDIS O. V. OLENDER, JACK H.

13-10718 WOODSON, SEAN D. V. UNITED STATES

14-5717 McNAMARA, GREGG V. CALIFORNIA

The petitions for rehearing are denied.

13-10202 HAYES, ARIKA V. MINAJ, NICKI, ET AL.

The petition for rehearing is denied. Justice Alito took no part in the consideration or decision of this petition.

ATTORNEY DISCIPLINE

D-2782 IN THE MATTER OF DISBARMENT OF RODERICK KEVIN BICKERSTAFF, SR.

Roderick Kevin Bickerstaff, Sr., of Los Angeles, California, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Roderick Kevin Bickerstaff, Sr. is disbarred from the practice of law in this Court.

D-2783 IN THE MATTER OF DISBARMENT OF KARL E. ROMINGER

Karl E. Rominger, of Carlisle, Pennsylvania, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Karl E. Rominger is disbarred from the practice of law in this Court.

D-2784 IN THE MATTER OF DISBARMENT OF DOUGLAS PAUL WACHHOLZ

Douglas Paul Wachholz, of Reno, Nevada, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Douglas Paul Wachholz is disbarred from the practice of law in this Court.

D-2785 IN THE MATTER OF DISBARMENT OF JAMES ALBERT FROST

James Albert Frost, of Washington, District of Columbia, having been suspended from the practice of law in this Court by

order of August 11, 2014; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that James Albert Frost is disbarred from the practice of law in this Court.

D-2786

IN THE MATTER OF DISBARMENT OF STEPHANIE YVONNE BRADLEY

Stephanie Yvonne Bradley, of Greenbelt, Maryland, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon her requiring her to show cause why she should not be disbarred; and the time to file a response having expired;

It is ordered that Stephanie Yvonne Bradley is disbarred from the practice of law in this Court.

D-2787

IN THE MATTER OF DISBARMENT OF LAWRENCE IVAN HOROWITZ

Lawrence Ivan Horowitz, of Katonah, New York, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Lawrence Ivan Horowitz is disbarred from the practice of law in this Court.

D-2788

IN THE MATTER OF DISBARMENT OF ROBERT B. RICHBOURG

Robert B. Richbourg, of Tifton, Georgia, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Robert B. Richbourg is disbarred from the

practice of law in this Court.

D-2789 IN THE MATTER OF DISBARMENT OF ROBERT J. GREENLEAF

Robert J. Greenleaf, of Henderson, Maryland, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Robert J. Greenleaf is disbarred from the practice of law in this Court.

D-2792 IN THE MATTER OF DISBARMENT OF RICHARD BRUCE LIVINGSTON

Richard Bruce Livingston, of Springfield, New Jersey, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

It is ordered that Richard Bruce Livingston is disbarred from the practice of law in this Court.

D-2793 IN THE MATTER OF DISBARMENT OF CARL F. LODES

Carl F. Lodes, of White Plains, New York, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Carl F. Lodes is disbarred from the practice of law in this Court.

D-2794 IN THE MATTER OF DISBARMENT OF ERIC S. EDELSTEIN

Eric S. Edelstein, of Great Neck, New York, having been suspended from the practice of law in this Court by order of

August 11, 2014; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Eric S. Edelstein is disbarred from the practice of law in this Court.

D-2795

IN THE MATTER OF DISBARMENT OF JAMES P. DUFFY, III

James P. Duffy, III, of Manhasset, New York, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that James P. Duffy, III, is disbarred from the practice of law in this Court.

D-2796

IN THE MATTER OF DISBARMENT OF DARYL J. HUDSON, III

Daryl J. Hudson, III, of Glenville, West Virginia, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Daryl J. Hudson, III, is disbarred from the practice of law in this Court.

D-2797

IN THE MATTER OF DISBARMENT OF JEROME PLOTNER

Jerome Plotner, of Jamaica, New York, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Jerome Plotner is disbarred from the

practice of law in this Court.

D-2798

IN THE MATTER OF DISBARMENT OF RIK ANDREW BACHMAN

Rik Andrew Bachman, of Fairfield, Connecticut, having been suspended from the practice of law in this Court by order of August 11, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Rik Andrew Bachman is disbarred from the practice of law in this Court.

Per Curiam

SUPREME COURT OF THE UNITED STATES

**PATRICK GLEBE, SUPERINTENDENT, STAFFORD
CREEK CORRECTIONS CENTER v.
JOSHUA JAMES FROST**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14–95 Decided November 17, 2014

PER CURIAM.

Over 11 days in April 2003, respondent Joshua Frost helped two associates commit a series of armed robberies in the State of Washington. In the main, Frost drove his confederates to and from their crimes. On one occasion, he also entered the house being robbed. On another, he performed surveillance in anticipation of the robbery.

Washington charged Frost with robbery and related offenses. Taking the witness stand, Frost admitted to his involvement, but claimed he acted under duress. As closing arguments drew near, however, Frost’s lawyer expressed the desire to contend both (1) that the State failed to meet its burden of proving that Frost was an accomplice to the crimes and (2) that Frost acted under duress. The trial judge insisted that the defense choose between these alternative arguments, explaining that state law prohibited a defendant from simultaneously contesting the elements of the crime and presenting the affirmative defense of duress. So Frost’s lawyer limited his summation to duress. The jury convicted Frost of six counts of robbery, one count of attempted robbery, one count of burglary, and two counts of assault.

The Washington Supreme Court sustained Frost’s conviction. It rejected the trial court’s view that state law prohibited Frost from simultaneously contesting criminal liability and arguing duress. *State v. Frost*, 160 Wash. 2d 765, 773–776, 161 P. 3d 361, 366–368 (2007) (en banc). By

Per Curiam

preventing the defense from presenting both theories during summation, it said, the trial court violated the National Constitution’s Due Process and Assistance of Counsel Clauses. *Id.*, at 777–779, 161 P. 3d, at 368–369. But the State Supreme Court continued, this improper restriction of closing argument qualified as a trial error (a mistake reviewable for harmlessness) rather than a structural error (a mistake that requires automatic reversal). *Id.*, at 779–782, 161 P. 3d, at 369–370. Because the jury heard three taped confessions and Frost’s admission of guilt on the witness stand, and because it received proper instructions on the State’s burden of proof, the State Supreme Court held that any error was harmless beyond a reasonable doubt. *Id.*, at 782–783, 161 P. 3d, at 370–371.

Frost filed a petition for writ of habeas corpus under 28 U. S. C. §2254. The District Court dismissed the petition, App. to Pet. for Cert. 76a, and a panel of the Court of Appeals affirmed, *Frost v. Van Boening*, 692 F. 3d 924 (CA9 2012). But the Court of Appeals en banc reversed and instructed the District Court to grant relief. 757 F. 3d 910 (2014).

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the Court of Appeals had power to grant Frost habeas corpus only if the Washington Supreme Court’s decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U. S. C. §2254(d). Here, the Ninth Circuit held that the Washington Supreme Court unreasonably applied clearly established federal law by failing to classify the trial court’s restriction of closing argument as structural error.

That decision cannot stand. Assuming for argument’s sake that the trial court violated the Constitution, it was

Per Curiam

not clearly established that its mistake ranked as structural error. *Most* constitutional mistakes call for reversal only if the government cannot demonstrate harmlessness. *Neder v. United States*, 527 U. S. 1, 8 (1999). Only the rare type of error—in general, one that “infect[s] the entire trial process” and “necessarily render[s] [it] fundamentally unfair”—requires automatic reversal. *Ibid.* None of our cases clearly requires placing improper restriction of closing argument in this narrow category.

The Ninth Circuit claimed that the Washington Supreme Court contradicted *Herring v. New York*, 422 U. S. 853 (1975). *Herring* held that complete denial of summation violates the Assistance of Counsel Clause. According to the Ninth Circuit, *Herring* further held that this denial amounts to structural error. We need not opine on the accuracy of that interpretation. For even assuming that *Herring* established that *complete denial* of summation amounts to structural error, it did not clearly establish that the *restriction* of summation also amounts to structural error. A court could reasonably conclude, after all, that prohibiting all argument differs from prohibiting argument in the alternative. That is all the more true because our structural-error cases “ha[ve] not been characterized by [an] ‘in for a penny, in for a pound’ approach.” *Neder, supra*, at 17, n. 2.

Attempting to bridge the gap between *Herring* and this case, the Ninth Circuit cited two Circuit precedents—*United States v. Miguel*, 338 F. 3d 995 (CA9 2003), and *Conde v. Henry*, 198 F. 3d 734 (CA9 2000)—for the proposition that “preventing a defendant from arguing a legitimate defense theory constitutes structural error.” 757 F. 3d, at 916. As we have repeatedly emphasized, however, circuit precedent does not constitute “clearly established Federal law, as determined by the Supreme Court.” §2254(d)(1); see, e.g., *Lopez v. Smith*, 574 U. S. ____, __ (2014) (*per curiam*) (slip op., at 6). The Ninth Circuit

Per Curiam

acknowledged this rule, but tried to get past it by claiming that circuit precedent could “help . . . determine what law is “clearly established.”” 757 F. 3d, at 916, n. 1. But neither *Miguel* nor *Conde* arose under AEDPA, so neither purports to reflect the law clearly established by this Court’s holdings. The Ninth Circuit thus had no justification for relying on those decisions. See *Parker v. Matthews*, 567 U. S. ___, ___ (2012) (*per curiam*) (slip op., at 13).

The second rationale for the Court of Appeals’ decision is no more sound than the first. The Ninth Circuit reasoned that, by allowing the prosecution to argue that it had proved the elements of the crimes, but “prohibit[ing]” the defense from responding that it had not, the trial court in effect “forc[ed] defense counsel to concede his client’s guilt.” 757 F. 3d, at 917. By extracting this “conce[ssion],” the Ninth Circuit continued, the trial court “relieved the State of its burden of proving guilt beyond a reasonable doubt,” “shifted the burden of proof to Frost,” and even “directed [a] verdict on guilt”—all “unquestionably structural [errors].” *Id.*, at 917–918.

No. The trial court, to begin, did not prohibit the defense from arguing that the prosecution failed to prove the elements of the crime. It instead precluded the defense from *simultaneously* contesting reasonable doubt and claiming duress. Reasonable minds could disagree whether requiring the defense to choose between alternative theories amounts to requiring the defense to concede guilt. Still more could they disagree whether it amounts to eliminating the prosecution’s burden of proof, shifting the burden to the defendant, or directing a verdict. In addition, even if the trial court’s ruling somehow “forced” the defense “at least tacitly [to] admit the elements of the crimes,” *id.*, at 913, the Ninth Circuit still would have no basis for ruling as it did. It goes much too far to suggest that our cases clearly establish that this supposed extraction of a “taci[t] admi[ssion]” is structural error, when they

Per Curiam

classify the introduction of a *coerced confession* only as trial error, *Arizona v. Fulminante*, 499 U. S. 279, 310 (1991).

* * *

Frost argued below that, even if it was reasonable for the State Supreme Court to treat improper restriction of summation as trial error, it was unreasonable for it to find harmlessness on the facts of this case. The Court of Appeals did not address this argument when sitting en banc, and it is not before us today.

We grant the petition for a writ of certiorari and respondent's motion to proceed *in forma pauperis*. We reverse the judgment of the Court of Appeals for the Ninth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.